

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-72**

June 8, 2015

Mr. Bobby Hazel

RE: FOIA Appeal 2015-72

Dear Mr. Hazel:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On February 2, 2015, you submitted a request to the MPD for records related to the investigation of the murder of Thomas Hazel by Tony Hazel.

The MPD denied your request on February 11, 2015, stating that release of the records would constitute an unwarranted invasion of personal privacy under D.C. Official Code §§ 2-534(a)(2), and (3)(C).

In May 2015, you appealed the MPD’s decision to the Mayor, asserting, among other things, that the documents sought were part of a public trial and therefore are records retained by a public body.

The MPD responded to your appeal in a letter to this office dated June 4, 2015.¹ In its response, the MPD changed its position. Instead of claiming that the records in question could not be disclosed for privacy reasons, MPD now asserts that the 1972 investigation’s files were purged in January 1998 pursuant to MPD’s retention schedule for closed homicide files. As a result, MPD states that it does not possess any documents that are responsive to your request. In support of this representation, MPD asserts that: (1) a detective searched the paper files in the homicide office; (2) closed homicide files are not stored in any other MPD office; and that (3) the 1972 closed files were never converted to electronic format.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who

¹ A copy of MPD’s response is enclosed with this letter.

represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they are “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is the adequacy of MPD’s search for the documents you requested, and your belief that you are entitled to the documents you are seeking. DC FOIA requires only that a search conducted in response to a FOIA request be reasonably calculated to produce relevant documents. The test is not whether any documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make reasonable determinations as to: (1) the location of records requested; and (2) the search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68).

In this matter, MPD indicates that a detective searched the paper files of the only MPD office likely to retain a responsive document. Further, documents pertaining to your request were never converted into electric format. Based on MPD’s representations, we conclude that its search was reasonable, and we must accept MPD’s position that that it does not retain responsive documents.

Conclusion

Based on the foregoing, we affirm the MPD’s decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)